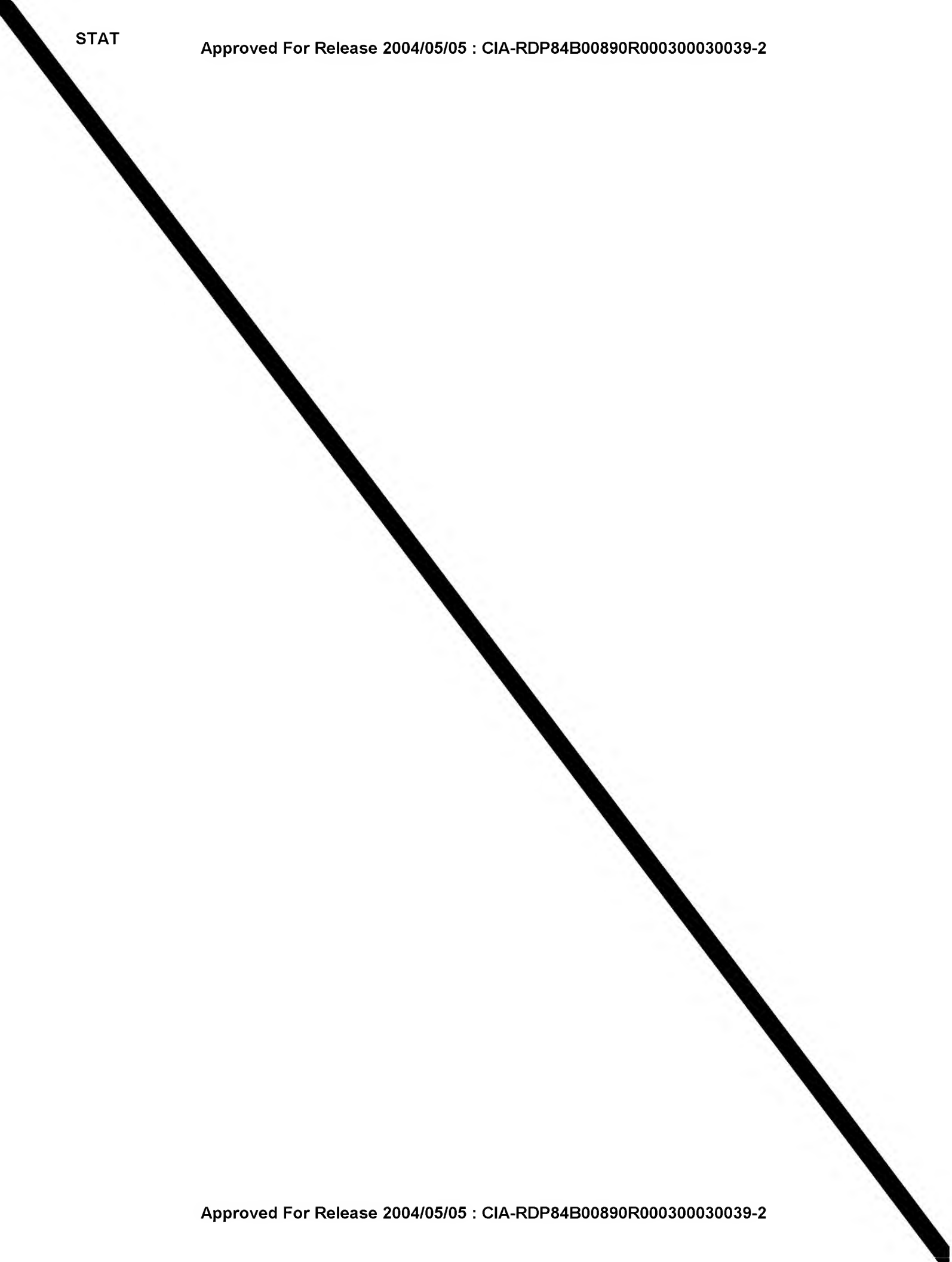

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THE DIRECTOR OF CENTRAL INTELLIGENCE

WASHINGTON, D.C. 20505

OLC 81-0256/b

Legislative Counsel

April 2, 1981

Mr. James M. Frey
Assistant Director for
Legislative Reference
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Frey:

This is in response to your request for the views of the Central Intelligence Agency on S. 106, the "Federal Reports Authorship Disclosure Act of 1981." The purpose of this Bill is to require any government agency that publishes, distributes, or transmits a document containing consultant-derived information to disclose the names of the principal experts or consultants whose work is reflected in the document. In such cases, the Bill would also require disclosure of the amount of the consultant contract; the name of the agency officer or employee who awarded the contract; the duration of the contract; and the type of procurement which was used prior to award of the contract. The Bill would require that all of this information be listed on the title page of the document, and that a copy of the document be forwarded to the General Accounting Office where it would be kept for a period of five years.

The proposed "Federal Reports Authorship Disclosure Act" does not purport to override provisions of the National Security Act of 1947 and the Central Intelligence Agency Act of 1949 relating to the protection of intelligence sources and methods. Nevertheless, we recommend exemption of the Intelligence Community from the provisions of S. 106 in order to avoid serious security-related problems.

Statutory requirements relating to the protection of classified material and intelligence sources and methods preclude acknowledgment of the Intelligence Community contractual relationships in the vast majority of consultant arrangements. S. 106 would, however, require a case-by-case analysis of the status of Intelligence Community documents with respect to the Bill's provisions, thus necessitating the allocation of funds and manpower, and diverting these resources from critical intelligence missions. Many individuals doing extremely valuable intelligence-related consulting work, moreover, are concerned that public acknowledgment of their provision of personal services to the Intelligence Community would lead to adverse personal or professional consequences. Many consultants

would refuse to contribute to unclassified publications if their relationship with the Intelligence Community would be subject to disclosure. It is essential that the Intelligence Community remain able to assure individuals who provide important support for our nation's intelligence activities that their desires for confidentiality will be respected.

Coverage of the Intelligence Community by the provisions of S. 106 would also have an unintended negative impact on the public availability of unclassified publications of general interest. The Intelligence Community currently makes many such publications available through the DOCEX System of the Library of Congress and other channels. S. 106 would seriously affect the release of these reports if they contained consultant derived material, because the information required to be disclosed by S. 106 (e.g., the name of the officer or employee who awarded the consultant contract) might be classified, and its inclusion on the title page would necessitate classification and withholding from public availability of an otherwise unclassified document.

Finally, there is a need generally to minimize opportunities for foreign government assembly of data concerning the Intelligence Community's areas of interest. Public disclosure of unclassified consulting arrangements could jeopardize the security of related classified projects and lead to the compromise of intelligence sources and methods.

Increased public visability and disclosure of information related to the Federal Government's use of experts or consultants is an admirable general goal, but we must recognize that special considerations come into play with respect to intelligence functions. The nation's intelligence agencies, particularly the Central Intelligence Agency, have personnel and security requirements which are in many respects unique. These are designed to protect the national security and reflect very important practical factors which place a special responsibility on the intelligence agencies to insure the security of their personnel and programs. The validity of these special considerations has consistently been recognized by the Congress. Thus, the Central Intelligence Agency was specifically exempted from the Classification Act of 1949 (5 U.S.C. 5102), from all major provisions of the Civil Service Reform Act of 1978, and from the Federal Advisory Committee Act (5 U.S.C. Appendix 1).

It would thus be unwise and inadvisable to impose the requirements of S. 106 upon the Intelligence Community. We

suggest, therefore, that section 2(a)(1) of the Bill be amended as follows:

> "(1) 'Agency' means any authority in the Executive Branch of the government of the United States, but shall not include any department or agency within the Intelligence Community as defined in section 4-207 of Executive Order 12036, January 24, 1978, or successor orders."

We appreciate the opportunity to comment on S. 106, and we would be most grateful if your office would keep us closely advised with respect to the development of an Administration position on this legislation. We believe, however, that S. 719, the "Consultant Reform and Disclosure Act of 1981" recently introduced by Senator David H. Pryor (D., AR) and referred to the Committee on Governmental Affairs, is more likely to be the principal consultant reform measure considered in the Senate this year. S. 719 contains special provisions related to consulting services for intelligence matters, but we are not certain that these provisions adequately address intelligence equities, and we would request that your office also maintain close contact with us regarding an Administration position on Senator Pryor's bill.

STAT

Frederick P. Hitz
Legislative Counsel

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